

Before the  
**Federal Communications Commission**  
 Washington, D.C. 20554

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JAN 15 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
 Petition for Waiver ) CC Docket No. 96-128  
 of AirTouch Paging )  
 of Sections 64.1300(c) and (d) )  
 of the Commission's Rules )

To: The Chief, Common Carrier Bureau

**COMMENTS ON  
PETITION FOR WAIVER**

AirTouch Paging ("AirTouch"), by its attorneys, hereby comments on its above-captioned Petition for Waiver (the "Waiver"), filed December 15, 1997. AirTouch is filing these comments to bring to the attention of the Commission, and other interested parties, supplemental information relevant to the Waiver that has come to light since the original petition was filed, or is responsive to questions raised by the Staff. By submitting this information on the comment date, interested parties will be accorded a fair opportunity to respond in the forthcoming reply phase of the proceeding.

**I. AirTouch Will Suffer Substantial Harm Absent a Waiver**

The Waiver is grounded on the fact that AirTouch has offered its customers the option to block calls from payphones and thereby avoid additional charges.<sup>1/</sup> The overwhelming

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<sup>1/</sup> Many end users opt for paging service because it is available at a relatively low fixed monthly cost. Requiring such users to pay surcharges for calls received from payphones would

(continued...)

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majority of AirTouch's customers have selected this option. Consequently, if AirTouch does not receive the coding digits necessary to selectively block the calls and nonetheless accrues payment obligations to the noncomplying payphone service providers ("PSPs"), it will suffer a financial loss which it will not be able to recover from its customers. AirTouch has now conducted an analysis that enables it to quantify the harm.

The PSPs have indicated that approximately 40% of all payphones are unable to supply Coding Digits.<sup>2/</sup> Using this 40% figure, and the results of a sampling of certain AirTouch call records, AirTouch estimates that an average of 6-8 calls per month are placed to each of AirTouch's toll free number customers from payphones that have been temporarily exempted from the obligation to provide Coding Digits ("non-compliant payphones").<sup>3/</sup> At present, AirTouch has approximately 120,000 customers who have toll free pager numbers, which means that an estimated 816,000 calls per month are received from non-compliant payphones. Compensation for these calls at \$0.284 per call would result in monthly costs to AirTouch of approximately \$231,744.00. Thus, over the course of the period covered by the *LEC Waiver*

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<sup>1/</sup> (...continued)

alter this fundamental character of the service. AirTouch has chosen, therefore, to allow its customers to opt to block calls from payphones and thereby avoid additional charges or to accept calls and pay a usage-based per-call rate.

<sup>2/</sup> See *LEC Waiver Order*, para. 7 and para. 10, n.22.

<sup>3/</sup> AirTouch has the capability in some systems to ascertain the number of calls to pagers from payphones that do supply Coding Digits. Assuming that these represent 60% of all payphone calls, AirTouch is able to estimate the number of calls from payphones that do not supply such digits.

Order, AirTouch could be obligated to pay non-compliant PSPs more than \$1 million in compensation. This is a material amount in the highly competitive paging industry.

## **II. AirTouch's Situation is Sufficiently Unique to Justify a Waiver**

AirTouch's Waiver arises out of the Commission's sua sponte waiver of PSP coding digits requirements and AirTouch's decision to offer customers the option to block calls. AirTouch now has learned that certain of its major competitors in the paging business have decided **not** to block calls. Attachment 1 hereto is a copy of a press release of Paging Network, Inc. ("PageNet") indicating that it will not block calls to 800 number pagers from payphones. Attachment 2 hereto is a billing insert from Metrocall indicating that it too will not block calls. PageNet and Metrocall, the two largest paging carriers in the country, have opted instead to increase their charges to paging customers in order to be compensated for the obligation to pay PSPs. Other paging companies also have opted not to block calls.

The significance of this development cannot be understated as it confirms the claim in the Waiver that AirTouch's situation is sufficiently unique to justify relief. Moreover, the Commission should welcome the fact that the paging industry continues to operate in a highly competitive fashion with competing carriers distinguishing themselves from one another by taking different approaches to payphone compensation (i.e., a lower cost service with blocking as compared to a higher cost service without blocking). The last thing the Commission should want to do is to require AirTouch to pay for calls that its customers have chosen to block, and thereby effectively force AirTouch to pass through charges. This would be tantamount to a Commission order requiring AirTouch to conform its service offerings to those of its competitors. This would turn the Commission's pro-competitive policies on their head.

### **III. Denial of the PCIA Stay Request Does Not Resolve The Waiver**

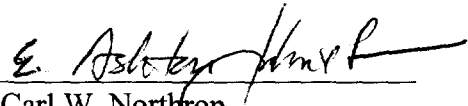
Subsequent to the submission of the Waiver, the Commission denied a PCIA stay request that was based in part on the need of paging companies for payphone specific Coding Digits. For several reasons, the fate of the PCIA stay request does not control the outcome of the AirTouch Waiver. First, PCIA's request was significantly broader than the AirTouch request.<sup>4/</sup> Second, different legal standards apply to a request for a stay of a Commission order as compared to a rule waiver. Third, AirTouch has shown detrimental reliance upon the earlier order which clearly indicated that carriers would be allowed to avoid charges by blocking calls from payphones. Thus, while AirTouch continues to support the PCIA position, good cause exists for granting the Waiver notwithstanding the Commission's decision on the PCIA stay request.

Respectfully submitted,

**AIRTOUCH PAGING**

Mark A. Stachiw  
Vice President  
& Senior Counsel  
AIRTOUCH PAGING  
12221 Merit Drive  
Suite 800  
Dallas, TX 75251  
(972) 860-3200

By:

  
Carl W. Northrop  
E. Ashton Johnston  
PAUL, HASTINGS, JANOFSKY  
& WALKER LLP  
1299 Pennsylvania Avenue, N.W.  
10<sup>th</sup> Floor  
Washington, D.C. 20004-2400  
(202) 508-9500

January 15, 1998

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<sup>4/</sup> PCIA was seeking blanket relief from any obligation to pay PSPs pending general industry compliance with the Coding Digits requirements. AirTouch is only seeking temporary relief on its own behalf based upon special circumstances from the obligation to pay non-compliant PSPs.

# ATTACHMENT 1



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Friday December 12, 10:11 am Eastern Time

## Company Press Release

*SOURCE: Paging Network, Inc.*

### PageNet Will Not Block Calls from Pay Phones to Paging Customers

DALLAS, Dec. 12 /PRNewswire/ -- PageNet announced today that it will not block toll-free calls made to its customers from pay phones, despite an October Federal Communications Commission ruling that requires surcharges to be paid to pay phone service providers for such calls. Several other paging companies have announced plans to block some or all toll-free calls made from pay phones.

Instead, in a notification to customers this month, PageNet has given customers the option of paying a \$5.00 monthly fee for personal toll-free number usage, or choosing to switch to a non-toll-free local number. The \$5.00 fee, effective January 1, reflects several costs, including basic usage and the cost of calls from pay phones.

Approximately 9 percent of PageNet's more than 10.1 million U.S. paging subscribers currently have toll-free numbers.

"The wireless messaging industry is identified with timely, urgent communication, and our customers deserve that -- no matter where the call is coming from," said Ted Mullinix, senior vice president of strategic planning for PageNet. "Many of our competitors already charge customers a separate fee for the use of personal 800 and 888 numbers. This fee will permit PageNet to continue offering customers the toll-free service they expect, without blocking of calls from pay phones."

Paging Network, Inc. (Nasdaq: [PAGE - news](#)) provides service to more than 10.2 million users in the United States and Canada through its coast-to-coast network of sales and service offices, resellers and affiliates. PageNet services include numeric and text messaging with local, regional and nationwide coverage options. Detailed information is available on the Internet at [www.pagenet.com](http://www.pagenet.com).

*SOURCE: Paging Network, Inc.*

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# **ATTACHMENT 2**

## Special Notice for Customers with 800 and 888 pager numbers.

Dear METROCALL Customer:

In October, the Federal Communications Commission (FCC) adopted new regulations implementing the "Pay Telephone Reclassification & Compensation Provisions" of the Telecommunications Act of 1996. This new federal rule stipulates that pay telephone companies must be compensated for all toll-free, 800/888 calls completed from pay phones they own. Some paying companies may choose to block calls to 800/888 numbers from pay phones. However, METROCALL has made the decision not to block pay phone calls to 800/888 pager numbers in order to continue to provide full access to your pager.

This new FCC compensation regulation became effective on October 7, 1997, and impacts all U.S. telecommunications companies. As a result, you may see an increase of up to \$5.95 per month for each 800/888 number you have. This charge will cover the cost of basic usage and ten (10) calls per month from pay phones. Each pay phone call after ten (10) will be charged at a rate of \$.30 per call.

We value your business and thank you for selecting METROCALL as your paying provider. If you would like to avoid this charge, you may change to a local number, where available, by contacting your local office.

**METROCALL**  
*America's Wireless Network*